

WEST VIRGINIA
SECRETARY OF STATE

KEN HECHLER

ADMINISTRATIVE LAW DIVISION

Form #5

FILED

REC SEP 18 AM 9:57

OFFICE OF THE SECRETARY OF STATE

**NOTICE OF AGENCY ADOPTION OF A PROCEDURAL OR INTERPRETIVE RULE
OR A LEGISLATIVE RULE EXEMPT FROM LEGISLATIVE REVIEW**

AGENCY: Department of Administration and
Division of Rehabilitation Services TITLE NUMBER: 186

CITE AUTHORITY: West Virginia Code Section 5A-3-5

RULE TYPE: PROCEDURAL X INTERPRETIVE _____

EXEMPT LEGISLATIVE RULE _____

CITE STATUTE(S) GRANTING EXEMPTION FROM LEGISLATIVE REVIEW

AMENDMENT TO AN EXISTING RULE: YES _____, NO X

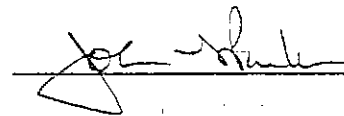
IF YES, SERIES NUMBER OF RULE BEING AMENDED: _____

TITLE OF RULE BEING AMENDED: _____

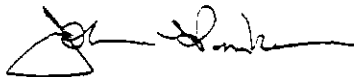
IF NO, SERIES NUMBER OF NEW RULE BEING ADOPTED: Three (3)

TITLE OF RULE BEING ADOPTED: Procurement List: Committee for the
Purchase of Commodities and Services from the Handicapped

THE ABOVE RULE IS HEREBY ADOPTED AND FILED WITH THE SECRETARY OF STATE. THE
EFFECTIVE DATE OF THIS RULE IS Oct 19, 1990



There was a comment period on these rules, and we received no comments. There has been no changes made from the original filing.

A handwritten signature, possibly reading "John Doe", written in dark ink.



STATE OF WEST VIRGINIA
DEPARTMENT OF ADMINISTRATION

State Capitol
Charleston, WV 25305

Gaston Caperton
Governor

Chuck Polan
Secretary

August 6, 1990

Honorable Ken Hechler
Secretary of State
Suite 157-K
Capitol Building
Charleston, West Virginia 25305

Re: Procedural Rules For The Governor's Committee for the
Purchase of Commodities and Services from the
Handicapped: Procurement List

Dear Mr. Hechler:

Approval is hereby given for filing of procedural
rules of the Committee for the Purchase of Commodities and
Services from the Handicapped, entitled "Procurement List",
as enclosed, in accordance with West Virginia Code, 5A-3-5.

Sincerely,

A handwritten signature in dark ink, appearing to read "Chuck Polan".

Chuck Polan
Secretary

CP:bt

Attachment

These procedural rules involve the determination and revision of a procurement list by the Governor's Committee for the Purchase of Commodities and Services from the Handicapped and the Director of the Purchasing Division of the Department of Administration.

APPENDIX B

FISCAL NOTE FOR PROPOSED RULES

Rule Title: Procedural Rules for Establishment of a Procurement List

Type of Rule: Legislative Interpretive y Procedural

Department of Administration and
Agency Div. of Rehabilitation Services Address State Capitol, Charleston, WV
25305

1. Effect of Proposed Rule	ANNUAL		FISCAL YEAR		
	Increase	Decrease	Current	Next	Thereafter
Estimated Total Cost	\$	\$	\$	\$	\$ 0
Personal Services					0
Current Expense					0
Repairs and Alterations					0
Equipment					0
Other					0

2. Explanation of above estimates:

No additional costs are anticipated by promulgating these rules.

3. Objectives of these rules:

To provide procedures for the establishment of an approved procurement list for use by various state buyers and purchasing agents.

CSR

TITLE 181b

GOVERNOR'S COMMITTEE
FOR THE PURCHASE OF COMMODITIES AND SERVICES
FROM THE HANDICAPPED

SERIES 3

PROCUREMENT LIST

Section - -1. GENERAL

1.1 Scope.--The scope of these procedural rules involves the determination and revision of a procurement list by the Governor's Committee for the Purchase of Commodities and Services from the Handicapped, "Committee," and the Director of the Purchasing Division of the Department of Administration.

1.2 Authority.--West Virginia Code Section 5A-3-5.

1.3 Filing Date.--

1.4 Effective Date.--

Section - -2. PROCUREMENT LIST.

2.1 General.

The Committee and Director of Purchasing shall approve a procurement list provided by the Central Nonprofit Agency, "CNA", being a list of the products and services offered by qualified workshops and rehabilitation facilities for which a purchasing agency, "PA", and/or Purchasing Division of the Department of Administration, "PD", may have entered into agreements with the workshop or CNA for the product or service. The list may also contain items that the Director of Purchasing and the Committee determines are suitable for procurement by the government of this State. The procurement list and revisions thereof shall be distributed to all purchasing officers of state spending units, political subdivisions and instrumentalities of the State by the CNA. Goods or services placed on the procurement list must be purchased through the CNA or its agent if the PA is mandated to follow the provisions of Article 3, Chapter 5-A of the West Virginia Code.

If any State spending unit, political subdivision or instrumentality intends to obtain any product or service, it shall determine whether the product or service is on the procurement list published in accordance with these regulations. If the needed product or service is on the procurement list, the State spending unit, political subdivision or instrumentality shall obtain such product or service from the procurement list.

Commodities or Services placed on the procurement list are "reserved" for the CNA to assign, subject to Committee approval, to a workshop or rehabilitation facility for as long as the State requires the item or service provided the item continues to meet State specifications for quality and delivery and the item can be provided for the fair market price set by the Committee, subject to approval by the Director of Purchasing. The Committee shall review prices at least annually and assure that the CNA maintains an updated procurement list and other documents required by the State.

As a requirement for placement on the procurement list, the workshop or rehabilitation facility must provide the Committee and the CNA with full disclosure of all costs and pricing information for use in the determination of the fair market price by the Committee.

2.2 Commodities.

For commodities, the procurement list shall include the item description, specification identification, lead time for purchase of materials, delivery or completion time, production or preparation time, price, any state identification numbers required and other pertinent information deemed necessary by the PA, PD, or CNA.

2.3 Services.

For services, the procurement list shall identify the type of service to be provided, the area(s) and/or spending units to be served, as well as information on prices, lead time for purchase of materials, delivery or completion time, production or preparation time, state identification numbers and other pertinent information.

2.4 Facilities Not Being Placed on Procurement List.

Facilities not wishing to be placed on the procurement list and who fail to avail themselves of the protection of West Virginia Code Section 5-3A-10, being the exemption from competitive bidding, may bid competitively on goods or services without the involvement of the CNA or Committee, provided the goods or services have not been "reserved" on the procurement list. Such goods or services may be placed on the list for the

bidding facility or another facility at any time by the Committee.

2.5 Other Institutions with Preference on the Procurement List.

Except for items and services provided by workshops and rehabilitation facilities under contract with the State as of July 1, 1990, commodities or services meeting state specifications which are under substantial development or in production by any other institution with preference may be placed on the procurement list with the approval of the Director of Purchasing.

The CNA may negotiate agreements regarding contract reservations with the Prison Industries subject to final approval by the Committee and the Director of Purchasing. The Committee may enter into direct negotiations with the Commissioner of Corrections, Director of Purchasing and Director of the Budget to jointly agree on procedures to coordinate the provisions of West Virginia Code Article 5B of Chapter 28, the Prison Made Goods Act, and Article 3A of Chapter 5A. In the event of a conflict between institutions with purchasing preference under the West Virginia Code, the Director of Purchasing shall make a final determination as to which institution may be placed on the procurement list for a specific item.

Section - -3. DEVELOPMENT OF COMMODITIES AND SERVICES FOR RESERVATION ON THE PROCUREMENT LIST.

(a) The Committee shall have the discretion in establishing the priority of commodities or services for inclusion on the procurement list.

(b) The facility first proposing a commodity or service through the CNA for inclusion on the procurement list may be given priority on its assignment, in the discretion of the Committee.

(c) Items to be considered for development may originate from a certified facility, the CNA, or a State spending unit.

(1) When originating from a facility, the facility proposing the commodity or service to the CNA may be given priority for set-aside. This facility must submit to the Committee documentation evidencing product development within ninety (90) days.

(2) When originating from the CNA, the CNA shall distribute appropriate information about the commodity or service

in a fair and equitable manner to all certified facilities as it is feasible. Interested facilities must provide the CNA with the information requested, as per the guidelines provided by the CNA.

(3) Requests directly from the State spending units shall be in accordance with subsections (1) or (2) of this Section, as is appropriate.

(d) The Committee shall assign commodities or services to the CNA or approved workshop or rehabilitation facility on the basis of subsections (a) and (b) of this Section.

(e) The facility proposing a commodity or service shall complete action to place it on the procurement list within nine (9) months after assignment. If within the nine (9) months, the workshop or rehabilitation facility has not completed action, the Committee may reassign the commodity or service to another facility capable of producing the commodity or performing the service, provided that the facility is prepared to take prompt action to submit a proposal to place the commodity or service on the procurement list. Priority on reassignment will be determined by the order in which the facilities proposed the commodity or service for addition to the procurement list, the proponent having the highest priority.

(f) The Committee may require a pre- or post-production sample for the purpose of determining workshop or rehabilitation production capability and quality of products at any time prior to or after an item is placed on the procurement list.

(g) In any case where a certified workshop sells items to the State or political subdivision which have been reserved on the procurement list or by the CNA for another facility without prior Committee approval, or any facility sells items at a price other than at the procurement list price, the Committee may determine that facility is no longer eligible for participation in this program.

Section - -4. DISTRIBUTION OF ORDERS.

The CNA shall distribute orders from the State only to workshops or rehabilitation facilities approved by the Committee to produce the specific commodity or to perform the particular service. When the Committee has approved two or more facilities to produce a specific commodity, or to perform a particular service, the CNA shall distribute orders among those facilities in a fair and equitable manner.

Section - -5. EXCEPTIONS.

(a) The Director of Purchasing, upon advice of the Committee or the CNA, may grant exceptions to the requirement that commodities or services be purchased from workshops or rehabilitation facilities without competitive bidding in any case where the commodity or service so produced or provided does not meet the reasonable requirements of the purchasing unit or cannot be reasonably provided by a facility. No spending unit may evade the intent of this section when required goods or services are reasonably available from workshops or rehabilitation facilities.

(b) The CNA shall recommend an exception be granted for a spending unit to procure from commercial sources commodities or services on the procurement list when the workshop or rehabilitation facility cannot furnish a commodity or service within the time period specified by the spending unit.

(c) An exception may be recommended when the quantity involved is insufficient for economical production or provision by the workshop(s).

(d) When the condition in subsection (b) of this Section is met, the exception shall be provided promptly, specifying the quantities and delivery covered by the exception.

(e) When the conditions of subsections (c) and (d) of this Section have been met and an emergency exists, a reasonable lead notice time shall be given to the CNA to determine whether a workshop or rehabilitation facility can produce and supply the commodity or service.

Section - -6. QUALITY OF COMMODITIES AND SERVICES.

6.1 Commodities.

Commodities furnished by qualified workshops and rehabilitation facilities shall be manufactured in strict compliance with government specifications. Where no specifications exist, commodities produced shall be of the highest quality and comparable to similar items available on the commercial market. Commodities shall be inspected utilizing nationally recognized methods and procedures for sampling and inspection.

6.2 Services.

Services provided by qualified workshops and rehabilitation facilities shall be performed in accordance with government specifications and standards. Where no specifications or standards exist, the service shall be performed in accordance with good commercial practices.

6.3 Unsatisfactory Quality.

When the quality of a commodity or service received from a workshop or rehabilitation facility is not considered satisfactory by the using state spending unit, the spending unit shall address complaints to the CNA. The CNA shall take necessary action to remedy the problem and shall advise the Committee accordingly.

Section - -7. Specification Changes

(a) Specifications cited in the procurement list may be revised when needed to keep current with industry changes and government needs. Since it is not feasible to show the latest revision on the publication date, only the basic specification shall be referenced in the procurement list. Procurement agencies shall notify the CNA of the latest applicable specifications.

(b) When an ordering office of the State, its political subdivisions or instrumentalities, is changing the design or construction of a commodity on the procurement list, the Committee and the CNA shall be notified of the contemplated changes prior to the effective date and shall be given a reasonable time in which to redesign or retool and incorporate such change in its listed products.

Section - -8. PRODUCTION OF COMMODITIES AND VALUE ADDED.

Facilities shall seek broad competition in the purchase of raw materials and components used in the commodities and services provided to the State. Facilities shall consult with the CNA before entering into multi-year contracts for raw materials or components used in the commodities and services provided to the State.

In the production of commodities, a workshop or rehabilitation facility shall make a value added contribution to the commodity by the reforming of raw materials, package modification, assembly of components, installation, warehousing, handling or a combination thereof. Shipments of goods from a non-certified provider directly to the State are not eligible for the procurement list or participation in the program.

Section - -9. ALLOCATION AND ORDERS.

9.1 Allocation

Allocation is the action taken by the CNA in designating the

workshop(s) that will produce definite quantities of commodities or perform specific services upon receipt of an order. In cases where contracts are in the name of the CNA and a producing facility is unable to meet specification or delivery requirements, the CNA may allocate orders to another certified workshop. Notice of this action shall be given to the Executive Secretary of the Committee. Purchasing agencies shall purchase commodities and services on the procurement list by contracting with the CNA.

9.2 Purchase Orders

(a) Purchase orders shall contain:

(1) For commodities, vendor's name, address and federal tax identification number, commodity class and number, latest specifications, quantity, unit price, item description, and place and time of delivery.

(2) For services, type and location of service required, latest specifications, work to be performed, estimated volume and time for completion.

(b) Ordering offices shall issue purchase orders with sufficient time for the CNA to reply, for the order(s) to be allocated, and for the workshop to produce the commodity or provide the service.

(c) The CNA shall make allocations to the appropriate workshop(s) upon receipt of an order from the ordering office.

(d) The CNA shall promptly acknowledge purchase orders. When a purchase order provides a delivery schedule which cannot be met, the CNA shall request a revision, which the ordering office should grant, if reasonable, or the CNA shall issue a purchase exception authorizing procurement from commercial sources.

(e) The CNA shall keep the ordering office informed of any changes in the lead time experienced by a workshop(s) in order to keep to a minimum requests for extensions once an order is placed by an ordering office. Where, due to unusual conditions, an order does not provide sufficient lead time, the CNA may request an extension of the delivery or completion date which should be granted, if reasonable. If extension of delivery or completion date is not reasonable, the ordering office shall first notify the CNA to reallocate or to request an exception authorizing procurement from commercial sources.

Section - -10. ADJUSTMENT AND CANCELLATION OF ORDERS

When the CNA or a workshop fails to comply with the terms

and conditions of a government order, the ordering office shall make reasonable efforts to negotiate adjustments before taking action to cancel the order. When a government order is canceled for failure to comply with its terms and conditions, the CNA shall be notified, and if practical, be requested to reallocate the order. The CNA shall notify the Committee of any cancellation of an order and the reason(s).

Section - -11. SHIPPING AND PACKING

(A) Commodities shall be shipped freight prepaid (FOB destination). Delivery is accomplished when a shipment is received and accepted by the purchasing agency. Time of delivery is the date stated on the procuring agency purchase order.

(b) Standard packing information, unless otherwise stated in the specifications, shall be provided by the facility via the CNA to the procuring agency.

(c) Subject to approval by the Committee, the CNA, when it deems necessary, may request payment from procuring agencies for set-up costs or costs incurred related to unusual delivery requests of commodities.

(d) Unless otherwise provided, routine correspondence or inquiries concerning deliveries of commodities being shipped from or performance of service by workshops shall be with the CNA.

Section - -12. PAYMENTS

Payments for products and services of a workshop or rehabilitation facility are due immediately after receipt of shipment or receipt of a correct invoice or voucher and acceptance by the purchasing agency. Payments for commodities or services shall be paid to the official contracting agency, i.e., the workshop or CNA.

KEN HECHLER
Secretary of State

MARY P. RATLIFF
Deputy Secretary of State

A. RENEE COE
Deputy Secretary of State

CATHERINE FREROTTE
Executive Assistant

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STATE OF WEST VIRGINIA

SECRETARY OF STATE

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Charleston, WV 25305-0770

WILLIAM H. HARRINGTON
Chief of Staff

JUDY COOPER
Director, Administrative Law

DONALD R. WILKES
Director, Corporations

(Plus all the volunteer
help we can get)

OK

TO: Diana Stout

AGENCY: Dept. of Administration

FROM: Judy Cooper, Director, Administrative Law Division

DATE: August 25, 1992

Recently our office sent to you the following rule to be reviewed,
proofed and returned:

SERIES: 3 TITLE: 186

As of today, we still have not received the proofread rule from you. This is a very important step in our process to get the rules into our legislative computer system and out to our subscribers in a monthly supplement. We would appreciate the rule being reviewed, proofed and returned to us immediately so that we can continue keeping our records and their records up-to-date. The rule is enclosed for proofing.

Thank you very much for your prompt attention to this matter. If you have any questions, please call.